



VALUATION OF 'BETI BACHAO BETI PADHAO' CAMPAIGN UNDER IGST ACT, 2017

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Valuation of Goods or Service has always been a challenge. Under Central excise also valuation has been a big challenge and subject to litigation. Similarly, under Service tax there are number of cases where valuation has been challenged under court of law.

In the year 2000, rules of 'Transaction Value' were introduced which clarified and resolved various issues related with valuation of goods or services but was not enough to tackle the issue completely. In 2012, Hon'ble Supreme Court decided a case on valuation, where huge penalty was imposed on one of the biggest car manufacturer for selling cars below the manufacturing cost. So there is no full proof frame work where valuation can be determined and taxes can be charged accurately. It has always been a cause of contention between assesses and the Excise and Service tax Department.

In Goods and Service tax Act, 2017 a attempt has been made to clarify and simplify the process of valuation of goods and service in very user friendly manner but still various aspect are left unanswered, especially in case of Inter-state transactions. Under IGST, GST Council has issued some helping notes regarding valuation under IGST with example to make the issues more clear. Hence, issued proper guidelines from time to time. In line with that on 28.06.2017, issued a notification no 4/2017 followed by notification no 12/2017 dt 15.11.2017 giving insight to the valuation of advertisement services provided on pan India basis.

Section 12(14) of IGST Act, 2017 deals with the provisions of advertisement services as provided to the government by different agencies for different type of advertisement services and through above said two notifications government has tried to make the system transparent and simple. Section 12(14) reproduced as under:

"The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be

determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed".

So if we go by the provisions of said section, it mention that ***the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contractor agreement entered in to in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.***

Para 3 of IGST Rules 2017 explains that the proportion of value attributable to different States or Union territories, in the case of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority, ***in the absence of any term in the contract between the supplier of service and recipient of services***, shall be determined in the following manner namely:

- (a) ***In the case of newspapers and publications***, the amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in a State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in such State or Union territory

For example:

*ABC, government agency for advertising, issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (having head office in one of the metros) for the editions of Delhi, Mumbai, Lucknow and Jaipur and so on. The release order has details like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper. **The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan.** The amounts payable to the Mumbai editions would*

constitute the proportion of value for the state of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF will issue separate State wise and Union territory wise invoices based on the editions.

- (b) **In the case of printed material** like pamphlets, leaflets, diaries, calendars, T shirts etc, the amount payable for the distribution of a specific number of such materials in a particular State or Union territory is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration:

As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of one lakh pamphlets (at a total cost of one lakh rupees) to be distributed in the states of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or Department concerned at the time of giving the print order.

Let us assume that this breakup is twenty thousand, fifty thousand and thirty thousand respectively. This breakup should be indicated in the print order. **The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan.** The ratio of this breakup i.e 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State wise by GH to ABC indicating the value pertaining to that State i.e twenty thousand rupees- Haryana, fifty thousand rupees- Uttar Pradesh and thirty thousand rupees- Rajasthan.

- (c) **In the case of hoardings (other than those on trains)**, the amount payable for the hoardings located in each State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in each such State or Union territory, as the case may be.

Illustration:

ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings nears the Airports in the four metros i.e. Delhi, Mumbai, Chennai and Kolkata.

The release order issued by ABC to IJ will have the city wise, location wise breakup of the amount

payable for such hoardings. The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the four metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State wise and Union territory wise by IJ to ABC indicating the value pertaining to that State or Union territory.

- (ii) **In the case of advertisements placed on trains**, the breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train, of the amount payable for such advertisements is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration:

ABC places an order on KL for advertisements to be placed on a train with regard to the "Janani Suraksha Yojana". The length of a track in a state will vary from train to train. Thus for advertisements to be placed on the Hazrat Nizamuddin - Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa.

KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in.

The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa.

The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory.

If this ratio works out to say 0.5:0.5: 2:2:3:3:1, and the amount to be paid to KL is **one lakh twenty thousand rupees**, then KL will have to calculate the State wise and Union territory wise breakup of the value of the service, **which will be in the ratio of the length of the track in each State and Union territory.** In the given example the State wise and Union territory wise breakup works out to:

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| Delhi | ₹5000/- (Rs. five thousand rupees only), |
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|----------------|---|
| Haryana | ₹5000/- (Rs. five thousand rupees only), |
| Uttar Pradesh | ₹20000/- (Rs. twenty thousand rupees only), |
| Madhya Pradesh | ₹20000/- (Rs. twenty thousand rupees only), |
| Maharashtra | ₹30000/- (Rs. thirty thousand rupees only), |
| Karnataka | ₹30000/- (Rs. thirty thousand rupees only) |
| Goa | ₹10000/- (Rs. ten thousand rupees only). |

Separate invoices will have to be issued State wise and Union territory wise by KL to ABC indicating the value pertaining to that State or Union territory.

- (d) (i) **In the case of advertisements on the back of utility bills** of oil and gas companies etc, the amount payable for the advertisements on bills pertaining to consumers **having billing addresses** in such States or Union territory as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory.

(ii) **In the case of advertisements on railway tickets**, the breakup, calculated on the basis of the ratio of **the number of Railway Stations** in each State or Union territory, when applied to the amount payable for such advertisements, shall constitute the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration:

ABC has issued a release order to MN for display of advertisements relating to the "Ujjwala" scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in.

- (e) **In the case of advertisements over radiostations** the amount payable to such radio station, which by virtue of its name is part of a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration:

For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another state. Separate invoices will have to be issued State wise and Union territory wise by MN to ABC based on the value pertaining to each State or Union territory.

- (f) **In the case of advertisement on television channels**, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely

- i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;
- ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;
- iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;
- iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

- (g) **In the case of advertisements at cinema halls** the amount payable to a cinema hall or screens in a multiplex, in a State or Union territory, as the case may be, is the value of advertisement service

attributable to dissemination in such State or Union territory, as the case may be.

basis of the telecommunication subscribers in such State or Union territory.

Illustration:

ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the states of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State wise and Union territory wise by ST to ABC indicating the value pertaining to that State.

Though, through these guidelines council has tried level best to resolve the valuation issues especially in case of advertisement industry but still there are the areas where best judgment assessment have to play its role and cause of litigation will arise.

(h) **In the case of advertisements over internet**, the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-

- i) the **internet subscriber figures** for a State shall be taken from the figures published in this regard by the Telecom Regulatory Authority of India ;
- ii) the figures published for the last quarter of a given financial year shall be used for calculating the number of internet subscribers for the succeeding financial year and at the beginning, the figures for the last quarter of financial year 2016-2017 shall be used for the succeeding financial year 2017-2018;
- iii) where such internet subscriber figures relate to a region comprising of more than one State or Union territory, the subscriber figures for a State or Union territory of that region, shall be calculated by applying the **ratio of the populations of that State or Union territory**, as determined in the latest census, to such subscriber figures;
- iv) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for this service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

(i) **In the case of advertisements through short messaging service** the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be **calculated on the**